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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,582	09/20/2001	Thierry Scheye	CHA216	7942

7590
Horst M Kasper
13 Forest Drive
Warren, NJ 07059

03/17/2004

EXAMINER

HAN, MARK K

ART UNIT PAPER NUMBER

3763

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,582

Applicant(s)

SCHEYE, THIERRY

Examiner

Mark K Han

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 1-7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: It is the Examiner's position that Applicant has evoked 35 U.S.C. 112, 6th paragraph, means-plus-function language to define Applicant's invention. Therefore, the Examiner requires the Applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials and acts perform the function recited in the claim element. Please note that the MPEP clearly states, "Even if the disclosure implicitly sets for the structure, materials, or acts corresponding to the means- (or step-) plus-function claim element in compliance with 35 U.S.C. 11, 1st and 2nd paragraphs, the PTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o)..." (Also see MPEP 2181 [Rev. 1, February 2000])

Appropriate correction is required.

Claim Objections

2. Claims 1-7 are objected to because of the following informalities: It is the Examiner's position that Applicant has evoked 35 U.S.C. 112, 6th paragraph, means-plus-function language to define Applicant's invention. Therefore, the Examiner has objected to the claims for the reasons set forth above in the objection to the specification.

Appropriate correction is required.

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3. Claim 3 is objected to because of the following informalities: Claim 3 recites the limitation "the said nesting organ" in lines 4-5 of the claim. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,344,435 to Aubin.

Aubin discloses a tube 14, skin collar 18, intravisceral collar 16 and means of immobilization (screw threading). See Figures 1-5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aubin.

Aubin discloses the claimed invention as shown above. Aubin, however, does not disclose expressly a bayonet fitting. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to substitute a bayonet fitting for a screw fitting because Applicant has not disclosed that a bayonet fitting provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the screw fitting of Aubin because a screw fitting and bayonet fitting are both well known and used interchangeably in the art for mechanical connectors. Therefore, it would have been an obvious matter of design choice to modify Aubin to obtain the invention as specified in claim 7.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aubin in view of U.S. Patent No. 5,391,156 to Hildwein et al. (hereinafter "Hildwein").

Aubin shows the claimed invention as shown above except for a noncircular opening and a pusher. Hildwein discloses a portal having a noncircular opening 142 and pusher 174. See

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Figure 28. It would have been obvious to one of ordinary skill in the art to modify the invention of Aubin with a noncircular opening and corresponding pusher, as suggested by Hildwein, to maintain a specific orientation between the pusher and the opening.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K Han whose telephone number is 703-308-4543. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Han
Patent Examiner
Art Unit 3763

mkh
March 12, 2004

BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3763